IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8306 of 1992

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HANSRAJ M CHUDASAMA

Appearance:

1. Special Civil Application No. 8306 of 1992

MR HARDIK C RAWAL for the Petitioner

MR PRABHAKAR UPADHYAYA with

MR MUKESH H RATHOD for the Respondent

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 16/08/2004

ORAL JUDGEMENT

1. The impugned award of the Labour Court -- being Reference (LCR) No.1680 of 1989, corresponding to new Reference (LCJ) No.1424 of 1990 recorded on 10th January, 1992, whereby, the dismissal order from the service against the respondent-Conductor, Hansraj Manji Chudasama, passed by the petitioner, being Disciplinary Authority, Gujarat State Road Transport Corporation

("GSRTC", for short) after holding departmental inquiry on the ground of misappropriation of public money in not issuing tickets to 21 passengers after collecting the amount of fare from all and upon being raided, was caught red-handed, and despite he, having cases of six misconducts in the past, out of which, two culminated into dismissal orders, but respondent-workman came to be reinstated by the orders of the Court -- is legal, valid and sustainable or not, is the main issue in focus in this petition, under Article 227 of the Constitution of India, at the instance of the employer-Corporation.

2. The Labour Court in the impugned award has undoubtedly, found that:

i. the misconduct has been established;

ii. there were 21 passengers travelling in the bus from whom the respondent-delinquent workman had collected fare without issuing tickets in their favour;

iii. it was nothing but a serious act of misappropriation on the part of the workman; and,

iv. the Corporation cannot, therefore, place any trust in such a workman, who is guilty of misappropriation of public funds.

However, the Labour Court in the impugned award has observed that:

(i) the dishonest intention on the part of the delinquency respondent-Conductor has not been proved "Beyond Reasonable Doubt" (emphasis supplied);

(ii) it is a very serious negligence on the part of the Conductor, who has served the Corporation for 13 years and ought to follow rules and regulations of the Corporation and in which, he has, totally, failed;

(iii) despite giving long and sufficient time to produce and examine his witnesses, the respondent-Conductor has not availed the opportunity; and,

(iv) the legality and validity of holding an inquiry is not questioned on behalf of the workman Conductor. However, the Labour Court has observed many times that the serious charge of misappropriation and resultant dishonesty has not been proved and that is the reason why, the Court quashed the dismissal order, recorded by the Disciplinary Authority after holding requisite inquiry for the serious misconduct on the part of the delinquent conductor.

3. The Labour Court has, also, observed that the position of the Conductor is of that of a trustee and he should serve the Corporation faithfully. It is observed in the impugned award that the order of dismissal is a harsh punishment, and though, previously, dismissed twice on the basis of the Default Card and reinstated by the order of the Court, the questioned incident of misconduct has occurred. The workman was, therefore, warned that the benefit of welfare regulation would not be given for all the times and that was the last opportunity given by the Court to improve himself and in future, he shall be careful in performing the duties and he should perform his duties honestly and diligently. On the account of proportionality of punishment, the Labour Court quashed and set aside the order of dismissal dated 22-06-1988 holding that it was very harsh and directed stoppage of one increment with cumulative effect for the proved misconduct. On behalf of the workman, claim for backwages was also given up and the Corporation was directed to reinstate the workman to his original post with continuity of service, but without backwages, in exercise of powers under Section 11A of the Industrial Disputes Act, 1947 ("Act", for short).

4. There is no dispute about the fact that the Default Card, produced at Annexure-B, clearly, reveals that there were as many as six acts of misconducts on the part of the respondent-Conductor. Almost all the past acts of misconducts are serious and relatable to the misconducts of misappropriation. Some of them were so serious that the Disciplinary Authority was constrained to pass order of dismissal from the service. Upon orders of the Court, he was reinstated in past though found guilty for serious misconducts.

5. It seems that the Labour Court's view is not correct and the approach is tainted with confusion as, the principle of benefit of doubt, available to the accused persons in a criminal trial, is wrongly assumed to be applicable to the proceedings in a domestic Tribunal proceedings. The Departmental Inquiry cannot be equated with the criminal trial. The principle of "beyond reasonable doubt" does not apply to the proceedings in a Departmental Inquiry. It is a settled proposition of law that the doctrine of "preponderance of probability" shall be applicable to the Departmental Inquiry proceedings. The view that the delinquency has to be established beyond reasonable doubt in a departmental action is nothing but a relic of the past and not the living force of the day. The entire approach of the Labour Court is, with due respect, totally

perverse and illegal in assessment of the facts and the law, while setting aside the dismissal order against the workman. The Labour Court has failed to appreciate in its real context and texture the provisions of Section 11A of the Act, which relates to the powers of the Labour Court or the Tribunal, to give proper relief, in the case of discharge or dismissal of workman.

6. Upon plain perusal of the provisions of Section 11A of the Industrial Disputes Act, 1947, the proposition laid down in the latest case-law needs to be heralded and highlighted, as observations made by the Labour Court in the impugned award are quite contrary to them:

i. The power of interference with the quantum of punishment is very much limited and circumscribed. It is true that when relevant factors are not taken note of, which have some bearing on the quantum of punishment, the Court certainly can direct reconsideration or in an appropriate case, to shorten the litigation, indicate the punishment to be awarded. This proposition is very well highlighted by the Hon'ble Apex Court in Kailash Nath Gupta Vs. Enquiry Officer (R.K.Rai), Allahabad Bank, AIR 2003 SC 1377.

ii. The punishment imposed can be interfered with only on being satisfied that it was highly disproportionate to the degree of delinquency or guilt as held in "Breach Candy Hospital and Research Centre Vs.Babulal B. Pardeshi", (2002) IV LLJ (Supp) Bom 1011. So is not the case in the present petition.

iii. When the action of the delinquent-workman has resulted into the loss of revenue to the Corporation and once misappropriation is established, then it is within the discretion of the employer to impose maximum penalty and therefore, in such case, no interference with the discretion so rightly exercised by the Disciplinary Authority can be made by the Labour Court. In "Regional Manager, U.P.SRTC, Etawah And Ors. Vs. Hoti Lal and Another", (2003) 3 SCC 605, the Hon'ble Apex Court, has very well propounded this proposition and the said case-law is squarely attracted to the facts of the present case.

7. It is proved and also found from the award of the Labour Court that the misconduct established against the respondent-Conductor is a serious one, involving

misappropriation of money and that too in the background of past precedents of six defaults and most of them, again, involving loss of money and misappropriation of public fund and resultant dismissal twice after holding Departmental Inquiries. A person, who is guilty of grave and serious misconduct like misappropriation of money and public fund, deserves serious punishment and the Labour Court ought not to have interfered with the punishment holding it to be disproportionate. Not only that, there are no extenuating circumstances, but there are serious aggravating circumstances in the present case, as in the past on six occasions, misconducts are held to be proved and some of them were involving loss of public money and misappropriation of public funds. It cannot be, therefore, said that on such person again being proved to be delinquent, having committed serious misconduct, there is no warrant for penalty of dismissal.

8. The punishment imposed by the disciplinary jurisdiction, after holding Departmental Inquiry, can be interfered with the aids of provisions of Section 11A of the Act, or on Court being fully satisfied that in the circumstances of the case, the degree or quality of the punishment is disproportionate to the extent and degree of the delinquency and the misconduct. In the present case, it cannot be said, therefore, even for a moment, that the extreme penalty of dismissal from service for misappropriation of money and public fund preceded by six misconducts in past, including misappropriation of public funds, does not warrant dismissal from service.

9. One integral aspect of industrial jurisprudence is that acts of theft, fraud, dishonesty misappropriation of public funds, apart from being exposed to the penal liability under the criminal law, have been treated as acts of misconduct, justifying dismissals. This is very well explained in "J.K.Cotton Spinning Mill & Weaving Co. Limited Vs. Its Workman", (1965) II LLJ 153 (SC) and followed by "Bangalore Woollen, Cotton& Silk Mills Limited Vs.B.Dasappa", (1960) II LLJ 39 (SC). The dismissal orders also include the act or conduct inconsistent or incompatible with due or faithful discharge of his duty to the master and an act or conduct of an employee so grossly immoral that all reasonable men may say that he cannot be trusted. In the scope of expression, "misconduct" it will be, therefore, interesting to mention that the Standing Orders of industrial employees also make such acts and conduct as "misconduct" by including them in their Standing Orders. When the misconduct is relating to morality, it is to be taken very seriously. Morality means particular moral

principles or Rules of conduct - good, uprightious and just behaviour - conforming to the customs or accepted standard of a particular culture or group. Any behaviour of an industrial employee, which does not conform to good and uprightious conduct of human being or the customs and accepted standards of a civilised society, such as justice, honesty, modesty, etc, may apart from being a criminal offence, constitute an act of an industrial misconduct, which is very serious. In other words, acts involving moral turpitude are such acts which involve grave infringement of moral sentiments of the community or are acts of base, violations and, also, depravity in the private and social duties, which a man owes to a fellowmen of a society in general, contrary to the accepted customary Rule or right and duty between man and man.

10. It is, also, a settled proposition of law that the yardstick to be applied for the appreciation and evaluation of the evidence recorded in the domestic Tribunal is not the same that applies to the criminal case. Departmental action is not a criminal trial. Therefore, the doctrine of "beyond reasonable doubt" cannot be applied. On the contrary, the principle of appreciation, as it is applied to civil cases, has to be applied in a Departmental Inquiry; in other words, the doctrine of "preponderance of probability", and not the doctrine of "beyond reasonable doubt". However, in the present case, the Labour Court has time and again observed in the impugned award that the delinquency of misappropriation, as alleged, has not been established beyond reasonable doubt. This is basically a wrong approach. Such a view is not sustainable, being not reasonable and legal. The Default Card of the respondent-Conductor, produced on record, squarely shows six past acts of misconduct, out of which in all cases, except one, the misconduct was of misappropriation of public funds and on two occasions, after holding inquiry, the Disciplinary Authority also thought it appropriate to dismiss the respondent-Conductor from the service, but for the orders of the Court, the respondent would not have survived and again got an opportunity to indulge in such a serious misconduct. It is, rightly, not disputed that the past acts of misconduct or defaults highlighted in the Default Record Sheet are relevant and material, and required to be considered while appreciating the merits of the outcome of the Departmental Inquiry. Despite sufficient and repeated opportunities offered to the delinquent workman-Conductor, he has not improved himself, as a result of which he landed in one more serious act of misconduct by misappropriating the public

funds and, therefore, the impugned order of dismissal from service was justified and the Labour Court's impugned order, directing, quashing and setting aside the dismissal order, is neither legal nor reasonable, but also highly perverse and contrary to the provisions of law. It is, therefore, necessary for this Court to put it in right and legal shape, quashing the impugned award. The effect of dismissal will take place from the date of the order. However, if a person has worked under the direction of the Court during the intervening period before the disposal of the matter on merits, the amount paid to the workman during such period should not be directed to be refunded in the larger interest of justice on the equitable ground.

11. It has been contended on behalf of the respondent-workman that the workman is reinstated and working since 1993 and, therefore, the extreme penalty of dismissal will disturb the equitable situation and will result into disproportionate-punishment-principle and in this connection, a decision of learned Single Judge in "Gujarat State Road Transport Corporation Vs.Jamnadas G.Kanth", 2000 (3) GLH (UJ) 17 is relied on. This decision does not help the respondent-workman; firstly, for the reason that it does not show detailed factual profile. Secondly, the ratio propounded therein is not attracted to the facts of the present case. Therefore, no capital can be earned out of citing such a decision in a case where gross misconduct involving misappropriation by a person having a very dark and shameful past record, highlighting as many as six misconducts and mostly, including misconduct on misappropriation of public funds, has occured.

12. The second decision, which is relied on behalf of the respondent-workman is "Gujarat State Road Transport Corporation Limited Vs.U.A.Malek", 2001-I-LLJ 180 rendered in C.A.No.1408 of 1993 dated 22nd November, 2000. Unfortunately, this decision does not also unfold or disclose past record or any material relevant forming or base of factual matrix, in absence of which, the contention that it is attracted to the facts of the present case, cannot be accepted. No doubt, it is held in this case that the respondent-employee was dismissed from the service for misappropriation of money by non-issuance of tickets and there was a direction by the Labour Court to provide employment to the dismissed employee afresh with no backwages and employee was in service from 1982 pursuant to the award passed by the Labour Court. It is held in this case that it would not be appropriate to upset the award of the Labour Court

when the respondent-workman has been in employment for such a long period. Obviously and evidently, no detailed facts are highlighted and in absence, it is difficult to consider where there was a serious misconduct in past as in the present case, as observed hereinabove, there are as many as six grave and serious misconducts committed by the respondent-workman and most of them entail and involve misappropriation of public funds. The post of the Conductor is that of a Trustee and where there is a serious breach of trust or misappropriation of public funds by such a functionary on whom the trust is reposed, he should not ordinarily be permitted to remain in the same office or work so as to avoid further acts of misappropriation. Otherwise, his indulgence in such activities or misconduct is highly probable. In the opinion of this Court, the said decision does not take the case of the respondent-workman any farther.

13. However, on behalf of the petitioner-Corporation, the reliance is placed on several decisions in support of the main plea that the work of a Conductor is like an Office of a Trust and misappropriation by such person shakes the faith and the confidence of not only the management, but also of the common public. When the charged employee holds a post of a trustee, where honesty and integrity are inbuilt requirements of functioning, it is absolutely necessary to deal with such cases with iron hands and not with any approach on humanitarian ground or leniency or misplaced sympathy.

14. Firstly, the reliance has been placed on a decision of the Hon'ble Apex Court in "Regional Manager, U.P. SRTC, Etawah and Ors., Vs. Hoti Lal and Anr." (supra), wherein, it has been observed that the respondent, who was a Bus Conductor under the UPSRTC, while being on duty, on 09-07-1988, the Assistant Regional Manager of the Corporation checked the bus and found sixteen persons to be without tickets. Even after realising fare from the passengers, no tickets had been issued up to the time of checking. When the Inspecting Officer started checking, the respondent hurriedly tried to issue tickets. Old tickets were found in his possession with the intent to use them again. The respondent was suspended and thereafter a Departmental Inquiry was held and a final order of termination was passed. The Division Bench of the High Court of Allahabad quashed the order of the learned Single Judge affirming the finding that on the basis of a full-fledged Departmental Inquiry conducted, the employee was found to be guilty of misconduct on consideration of the materials. However, since the alleged misconduct had

caused loss to the State to the extent of Rs.16/= only, a Division Bench of the High Court observed that the punishment awarded was not commensurate with the charge. Therefore, it set aside the order of termination leaving it open to the employer to award any punishment, other than removal or termination or compulsory retirement. It was, therefore, contended on behalf of the State in an appeal before the Hon'ble Apex Court that the High Court had exceeded its jurisdiction in interfering with the quantum of punishment and practically restricted the Department's discretion to imposition of only minor penalties. Upholding the contention, while allowing the appeal, the Hon'ble Apex Court held that the Court or the Tribunal, while dealing with the quantum of punishment, has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court, no reasons whatsoever were indicated as to why the punishment was considered disproportionate. It was further held that failure to give reasons amounted to denial of justice and a mere statement that it is disproportionate would not suffice. It was not only the amount involved, but the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trustee where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently or liberally. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. It was in this context, therefore, it was held in this case that the conclusion of the Division Bench of the High Court was not proper. The said decision is attracted, fully, to the facts of the present case.

15. Secondly, the reliance is also placed, on behalf of the petitioner-Corporation, on a decision of the Hon'ble Supreme Court rendered in "Karnataka State Road Transport Corporation Vs. B.S. Hullikatti", (2001) 2 SCC 574. After having considered the entire judgment dispassionately, this Court is of the opinion that the ratio laid down and propounded in this decision is, also, fully attracted to the facts of the present case. It has been found and observed in this case that as the respondent was in service as a Conductor for nearly 22

years, it was difficult to believe that he did not know what was the correct fare which was to be charged. The principle of `res ipsa loquitur', namely, the facts speak for themselves, was clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his, was bound to result in financial loss to the appellant Corporation. Therefore, the order of dismissal was felt not to have been set aside, but as in the meantime, the respondent had already superannuated, on the special facts of the case, the order of reinstatement was also felt deemed then not to set aside. But it was directed that the respondent would not be entitled to any back wages at all but in special situation profile it was directed that he would be entitled to the retiral benefits.

16. It will be interesting to refer here the decision of the Hon'ble Apex Court in "Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Limited) And Ors. Vs. Secretary, Sahakari Noukarara Sangha and Ors.", (2000) 7 SCC 517, in which, it has been, succinctly, held that when the charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is established, may be for a small or large amount, there is no question of showing uncalled-for sympathy or mercy and reinstating the employees in service. In case of proved misappropriation, there is no question of considering past record. It is a discretion of the employer to consider the same in appropriate cases, the Labour Court cannot substitute the penalty imposed by the employer in such cases. The proposition of law, so lucidly propounded in this decision, is, also, squarely attracted to the factual profile of this case.

17. While viewed in the light of the factual profile, the latest proposition of law, discussed hereinabove, in pursuance of the interpretation of Section 11A of the I.D.Act, and the ambit and jurisdictional scope of the Labour Court in such matters, the observations made in para-8 of impugned award are, totally, unwarranted and the views adopted in the impugned award are, totally, unsupportable. In reaching the ultimate conclusion,

directing reinstatement in the service by quashing the order of dismissal dated 22-06-1986 with continuity of service and substituting the punishment by stoppage of one increment with cumulative effect, the Labour Court has not only misdirected itself but also manifestly shown perversity, resulting into miscarriage of justice and it is also fully tainted with the illegality in the peculiar facts and circumstances. Therefore, the directions and the award of Labour Court are required to be quashed and set aside, upholding the termination of service by the Disciplinary Authority of the petitioner-Corporation, leaving the parties to bear their own costs. Petition, therefore, shall stand allowed to that extent with a clarification that for the period, during the pendency of the petition and after the order of the Labour Court, the work and the job done by the workman, the petitioner-Corportaion shall not be entitled to recover or get the refund of the amount paid, as, although jurisprudentially, the order of termination relates back to the date when it was passed. This clarification is made in the larger interest of justice for fairness and justness to the employee or the workman on the principle of doctrine of pay for work. Rule made absolute to the aforesaid extent.

(J. N. BHATT, J.)

/shamnath